



March 13, 2017

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, GN Docket Nos. 12-268, 16-306

Dear Ms. Dortch:

On March 9, 2017, Rick Kaplan, Alison Neplokh and the undersigned, all of the National Association of Broadcasters (NAB), met with Alison Nemeth of Chairman Pai's office. During the meeting, NAB discussed challenges surrounding the repack of broadcast television stations following the close of the incentive auction.

While the close of the incentive auction marks a significant achievement, the Commission's work is far from over. The close of the auction will also mark the commencement of a multi-year transition during which hundreds of television stations will move to new channels. Due to the number of television stations that will be moving, resource constraints, the complex interference interdependencies between stations and the potential for disruptive impacts to non-repacked broadcasters, this will be the most complex transition the Commission has ever overseen.

Additionally, as stations receive their channel assignments and begin to contact consultants, vendors, and neighboring stations, hypothetical concerns are becoming harsh practical realities. For example, as NAB and other broadcasters have begun to evaluate repacking details the Commission has sent to television stations, it has become clear that the repack will have a significant impact even on non-repacked broadcasters, including FM radio stations. These stations and their listeners are threatened with potential service disruptions despite the fact that they have nothing whatsoever to do with the auction.

The Commission's focus must be on ensuring a smooth transition that delivers spectrum to wireless companies in a timely fashion without unreasonable disruptions to broadcasters or the public. Moving forward, both anticipated and unanticipated challenges will further complicate the task.

Unfortunately, previous Commission decisions have made this already daunting task even more challenging:

- The Commission did not use the \$1.75 billion TV Broadcaster Relocation Fund as a budget for repacking, which could have limited the number of stations assigned to new channels.<sup>1</sup>
- The Commission elected not to optimize repacking results during the auction, which could have made the ultimate repacking plan more efficient and required fewer stations to relocate to clear spectrum.<sup>2</sup>
- The Commission designed an overly complex reverse auction bidding mechanism, instead of simply asking broadcasters to name their own price in a simple sealed bid and then building the most efficient band plan possible based on broadcaster participation and bidding.
- The Commission compounded this decision by forbidding broadcasters from re-entering they auction once they dropped out.
- The Commission put nearly all of its resources to date into the auction mechanics with comparatively little time and attention being dedicated to repacking preparation.

These decisions have made the repacking project larger, more disruptive, more time-consuming and more expensive than it otherwise could have been.

Moreover, the Commission established its rigid 39-month deadline in May 2014, without knowledge of the number of stations to be repacked, the particular channels each station and its neighbors would need to move to, or the circumstances that makes each move unique. The transition plan Commission staff were directed to reverse-engineer from a pre-determined end point should not be considered authoritative.

Neither NAB nor the Commission at this point has enough information to know how long each station will need to avoid major service disruptions, but the Commission can put a process in place to handle situations where stations are unable to complete construction in time for its phase transition deadline. In the event each station's deadline does not prove

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<sup>1</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6831-6832 ¶¶ 646-648 (2014); see also *id.* at 7041-7042 (Commissioner Pai, dissenting, stating "the Commission should have adopted a \$1.75 billion budget for any repack.")

<sup>2</sup> NAB proposed that the Commission optimize repacking results after every round during the auction or at other intervals. Letter from Rick Kaplan to Marlene H. Dortch, Attachment at 5, GN Docket No. 12-268 (April 23, 2014).

achievable, broadcasters presently have no good options. Under the Commission's existing rule, which remains the subject of a pending petition for reconsideration, broadcasters are required to cease operation on their pre-auction channels on their phase completion date, without exception.

That is a plainly unreasonable, imbalanced outcome. If the 39-month deadline and each intermediate phase completion date turns out to be accurate, and the transition can be completed in that time without undue disruption to viewers and listeners, broadcasters will be the first to congratulate the Commission. But the Commission should also be prepared for the far greater likelihood that its arbitrary prediction will be wrong, and that leaving it in place will actively undermine the efficiency of the transition. We urge the Commission to adopt a flexible, balanced approach to repacking that is fair to all stakeholders, while avoiding disruption to existing broadcast services.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a stylized, flowing script.

Patrick McFadden  
Associate General Counsel,  
National Association of Broadcasters

cc: Alison Nemeth

# Repacking Broadcasters: Planning for Success

March 2017

# Welcome to Base Camp



# The Repacking Challenge

- Large number of stations moving
- Resource constraints
- Complex interference relationships
- Known and unknown complications

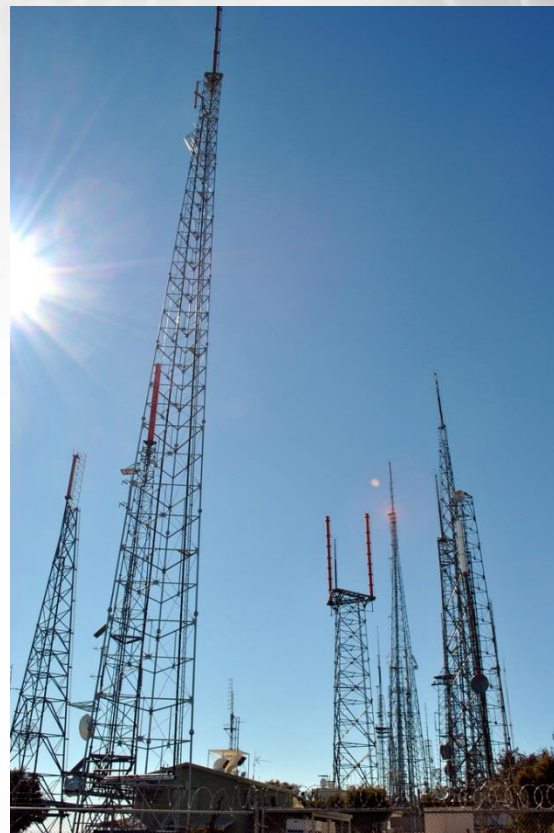
# Self-Inflicted Wounds

## Prior Decisions Add to Timeline:

- Failure to use relocation fund as a budget
- Overly complex auction design
- Failure to optimize during auction
- Lack of focus on repack

# Bystander Stations

- Repacking will not affect only the repacked
- Approximately 1,200 tower sites have both TV and FM operations
- Non-repacked stations, including FM, subject to two potential challenges
  - RF exposure
  - Structural issues





# Needed Reforms

- FCC should take a proactive role
- Timing essential so that viewers and listeners are not disenfranchised
- Repacking plan should be flexible and subject to real-time adjustment
- Plan must acknowledge impacts on non-repacked stations